IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/10/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

Criminal Appeal No.1674 of 2002

Mohan .. Appellant

-Vs-

State by,
Inspector of Police,
Thalai Gnayiru Police Station
(Crime No.190 of 2001) .. Respondent

PRAYER: Appeal against the judgment dated 5.3.2002 made in S.C.No.28 of 2002 on the file of Additional Sessions Judge, Nagapattinam.

!For Appellant : Mr.E.R.K.Moorthy

^For Respondent : Mr.A.N.Thambithurai
Government Advocate (Crl.Side)
:JUDGMENT

(Judgment of the Court was delivered by P.D.DINAKARAN,J.)

The appeal is directed against the judgment dated 5.3.2002 made in Sessions Case No.28 of 2002 on the file of the Additional Sessions Judge, Nagapattinam, whereunder the appellant herein, sole accused was tried for the offence punishable under Section 366 I.P.C., as well as for the offences punishable under Sections 376(f), 302 and 201 I.P.C., in connection with the occurrence said to have taken place at about 8.00 p.m., on 24.03.2001 in Sadaiyankadu village, within the jurisdiction of Thalai Gnayiru Police Station, Nagapattinam District, for having said to have abducted, raped and consequently murdered one Amulu alias Kalaijyothi, aged about 10 years at the time of occurrence.

2.1. The case of the prosecution was built up on the statement lodged by P.W.1 to P.W.2, Village Administrative Officer at about 10.30 a.m. on 25.03.2001, which was subsequently marked as Ex.P1. P.W.1 is nonetheless the father of the deceased. Based on the complaint (Ex.P1), a First Information Report (Ex.P18) was registered by the Sub Inspector of Police (P.W.17) at about 11.30 a.m. on 25.3.2001.

2.2. The story of the prosecution is that P.W.1, the father of the deceased was residing at Vettaikaraniruppu village and he had two children viz., the deceased Amulu alias Kalaijyothi and Venkatesan. P.W.1's daughter Amulu alias Kalaijyothi was staying with her grandfather, P.W.15 and was studying at a school near Pallivasal at Tiruvarur. The accused, a resident of Vanavanmahadevi village, was working under P.W.15, who was residing at Sadaiyankadu village. The house of P.W.1, the father of the deceased was situated at + k.m.distance from the house of P.W.15 and the accused used to take the deceased from the house of P.W.15 to the house of P.W.1 and vice versa. On 24.03.2001, at about 7.00 p.m., the accused, who was carrying kerosene and sugar, took the deceased and her brother Venkatesan from the house of P.W.1 5 to the house of P.W.1. Thereafter, he left the brother of the deceased at the house of P.W.1 and took the deceased on the guise of taking her to the house of P.W.1 for studying. However, he took the deceased near Harichandra river, where, under a tree, he raped the deceased by closing her mouth and nose with hands in order to restrain her from raising alarm, following which the deceased died due to shock. Thereafter, the accused, with a view to cause disappearance of evidence of offence, threw the dead body of the deceased Amulu alias Kalaijyothi in the Harichandra river. Thereafter, the deceased was not seen by anyone.

2.3. On 25.03.2001, at about 6.00 a.m., P.W.6 Sadasivam came to the house of P.W.1 and asked him as to the whereabouts of his daughter, to which P.W.1 replied that he had sent his daughter to the house of P.W.15 along with the accused. P.W.6 informed P.W.1 that the dead body of his daughter is found in Harichandra river. Immediately, P.W.1, his wife Venkateswari and P.W.6 rushed to the scene of occurrence, where they found the body of the deceased floating on the river. They brought the body to the banks of the river and when examined, they found that the deceased's eyes were protruding and there was bleeding in the nose, mouth and also in the private parts.

2.4. Thereafter, P.W.1 went to the house of P.W.2, the Village Administrative Officer of Vettaikaraniruppu village and gave a statement, pursuant to which P.W.2, along with P.W.3, village menial went to Thalai Gnayiru Police Station and handed over the statement given by P. W.1. P.W.17, Sub Inspector of Police, received the said statement and registered it in Crime No.190 of 2001 for the offence under Sections 376 and 302 I.P.C. Ex.P.18 is the printed F.I.R.

2.5. Pursuant to the F.I.R. (Ex.P18), the investigating officer (P. W.20) undertook the investigation, visited the place of occurrence, prepared an Observation Mahazar (Ex.P4) and also a Rough Sketch (Ex.P21), recovered material objects from the scene of occurrence viz., M.O.1 - skirt, M.O.2 - Tops, M.O.3 - bangle pieces (four), M.O.4 - Ear studs, M.O.5 - white colour beads, M.O.6 - blood stained mud, M.O.7 - sample earth, M.O.8-lungi, M.O.9-Shirt and M.O.10-Jatty, under mahazar Exs.P5 and P7 in the presence of P.Ws.7 and 8. He also conducted inquest on the body of the deceased, which is marked as Ex.P.22. After seizing the clothes worn by the deceased, the body of the deceased was sent for post mortem with the requisition marked as Ex.P.8, through P.W.16 - Police Constable, who handed over the body of the deceased to P.W.4, Doctor attached to the Government Hospital, Nagapattinam.

2.6. P.W.4, who conducted post mortem at 4.45 p.m. on 25.3.2001 and issued Post Mortem Certificate (Ex.P.10), found the following external injuries.
"There was a tear of 1.5 cm in the 6'O clock position of the hymen. Abrasion, swelling and blood stained discharge was seen at the edges of the tear. Vagina freely admitted two fingers. There was no injury in the vagina. There was no injuries in the thighs or chest. Vaginal smear and cervical smear was taken. On microscopic examination, no spermatozoa seen."

P.W.4 reserved the cause of death pending the report of chemical analysis of viscera. On 17.4.2001, Ex.P.9, chemical analysis report of the examination of viscera was issued by the Regional Forensic Science Laboratory, Medical College Buildings, Thanjavur, whereunder it was opined that the deceased would appear to have died of shock due to subarachnoid haemorrhage 18-21 hours prior to post mortem.
2.7. On the very same day of occurrence viz., on 24.3.2001, P.W.20 Inspector of Police arrested the accused near the banks of Koozhai river and he gave a confession statement in the presence of P.W.8 and another. The admissible portion of the confession statement given by the accused is marked as Ex.P.6. Thereafter, the accused took the police party to the house of the president of the village and from the roof of the house, produced the material objects M.Os.8 to 10, which were seized in the presence of P.W.8 and another under mahazar Ex.P7. The material objects were forwarded for chemical analysis through the Court and accordingly, chemical analyst's report (Ex.P.13) and Serologist's report (Ex.P.14) were obtained.

2.8. On 27.3.2001, P.W.20, sent a requisition to the Court for the medical examination of the accused and also a requisition for chemical analysis of the material objects. He examined the witnesses and recorded

their statements on various dates. Thereafter, as P.W.20 was transferred, his succeeding officer completed the investigation and filed the final report on 15.8.2001.

3.1. The accused, however, denied the charges and hence he was tried in S.C.No.28 of 2002 on the file of Additional Sessions Judge, Nagapattinam.
3.2. On behalf of the prosecution, 20 witnesses were examined. P.W.1 is the father of the deceased, who spoke about the accused taking the deceased with him to the house of P.W.15, P.W.2 is the Village Administrative Officer, P.W.4, the doctor who conducted post mortem, P.W.16 is the Head Constable, who handed over the body of the deceased to P.W.4 for post mortem, P.W.17 is the Sub Inspector of Police, who registered FIR, and P.W.20 is the Investigating Officer, through whom documents referred to above were marked as Exs.P1 to P.22 and Material Objects referred to above were produced and marked as M.Os.1 to 10.

4. When the accused was questioned under Section 313 Cr.P.C., after the trial, he pleaded not guilty. However, the learned Additional Sessions Judge, Nagapattinam, after appreciating the evidence on record, convicted the appellant for the offence punishable under Section 36 6, 376, 302 and 201 I.P.C. and sentenced him to undergo 2 years rigorous imprisonment with a fine

of Rs.100/-, in default 3 months rigorous imprisonment for the offence under Section 366 I.P.C., 10 years rigorous imprisonment with a fine of Rs.200/-, in default 6 months rigorous imprisonment for the offence under Section 376 I.P.C., imprisonment for life with a fine of Rs.500/- in default six months rigorous imprisonment for the offence under Section 302 I.P.C., and two years rigorous imprisonment with a fine of Rs.100/-. In default 3 months rigorous imprisonment, for the offence under Section 201 I.P.C. Hence, the above appeal.

5. Mr.E.R.K.Moorthy, learned counsel for the appellant challenges the conviction of the appellant as well as the sentence imposed on him on the following grounds:-

(i)The case of the prosecution attributing and fixing the offence under Section 366 I.P.C., as to the kidnapping of the deceased by the appellant is highly contradictory, as P.W.1, the father of the deceased says that he himself has sent his daughter along with the accused to the house of P.W.15; and

(ii)P.W.4, the doctor who conducted postmortem on the dead body issued Ex.P10, postmortem certificate, without giving any opinion about the cause of death and whether the deceased was raped and only at the time adducing of evidence, the doctor says that the deceased died due to shock and haemorrhage.

6. Mr.A.N.Thambithurai, learned Government Advocate (Criminal Side), on the other hand, justifies the conviction of the appellant and also the punishment imposed on him, as the same is based on the evidence of P.W.1 that the accused alone has taken the deceased along with him to the house of P.W.15, which is corroborated by the evidence of P.W.6, who saw the deceased accompanying the accused and also the evidence of P.W.4, the doctor who conducted postmortem , opining that the death was due to shock and haemorrhage. The learned Government Advocate (Crl.Side) also contends that the evidence of P.W.1 and P.W.6 is corroborated by the evidence of P.W.5, who was present with P.W.1 in his house, when the accused took the deceased along with him. 7. We have given a careful consideration to the submissions of both sides.
8. Concededly, the presence of the deceased along with the accused on the fateful day has been witnessed by P.Ws.1, 5 and 6, who have categorically spoken about the deceased being taken by the accused. The master and servant relationship between P.W.15 and the accused is also not disputed and there is every chance of the accused having proximity with the deceased, who, thinking that the accused will safely leave her in her grand father's house, accompanied him. However, the fact that the accused asked the deceased to accompany him to the house of P.W.15 is not well established by the prosecution, as P.W.1, in his evidence, has spoken to the effect that he himself has sent his daughter/deceased along with the accused. Hence, the offence under Section 366 is not made out. Accordingly, the accused is liable to be acquitted from the said offence. However, the accused taking advantage of the situation and the innocence and tender age of the deceased, indulged in brutal rape and gruesome murder.

9. The case of the prosecution is not based on the direct evidence or eye witness, but based on circumstantial evidence. Since every circumstantial evidence is relied upon by the prosecution and have a probative link for a safe conviction, the same must not only satisfy the test of reasonability, but also confirmed on certainty. The circumstance relied upon in support of conviction must, therefore, be fully established and the weight of evidence furnished by those circumstances must be so complete. Therefore, the link in the chain should be fully established to a conclusive nature but not on mere suspicion to hold the accused guilty. In other words, all the circumstances cumulatively taken together should lead only to the irresistible conclusion that the accused alone is the author of the crime. Therefore, when the case of the prosecution is based on circumstantial evidence, each and every incriminating substance must be clearly established by a reliable and clinching evidence and the circumstances must be proved from a chain of evidence, from which only irresistible conclusion for the guilt of the accused can be safely drawn. Hence, we are inclined to analyse the evidence microscopically to satisfy ourselves as to the chain of the circumstances that led to the only inference of the guilt of the accused without any break in the link.

10. The evidence of P.Ws.1 and 15, father and grandfather of the deceased, aged 10 years, speaks about the case of the prosecution that the accused was working in the house of P.W.15, where the deceased girl Amulu alias Kalaijyothi was staying to pursue her education in the school near Pallivasal at Thiruvarur. The distance between the house of the deceased and her grandfather P.W.15 is about + km. Deposing confidence in the servant, both P.W.1 and P.W.15 used to ask the accused to take the deceased from the house of P.W.15 and P.W.1 and vice versa. P.W.5 is the neighbour of P.W.1 living at four to five houses away from the house of P.W.1. As per the evidence of P.Ws. 1, 5 and 15, the accused brought the deceased from the house of P.W.15 on 24.3.2001 evening, bringing some kerosene and sugar at about 7.30 p.m., when P.W.5 was present in the house of P.W.1, and after handing over the kerosene and sugar, the accused took the deceased back to the grandfather's house, P.W.15, where she is ordinarily staying to pursue her education. P.W.13 is a fisherman, who deposed that he saw the deceased accompanied by the accused, was coming from the house of P.W.1, and when enquired, she replied to P.W.13 that she was going to her grandfather's house P.W.15, to study. According to P.W.14 a fisherman, when he was fishing on 24.3.2001, he heard noise 100 feet away of something being thrown into the water at about 8.15 p.m., and thought that someone had thrown the fishing net into the water for fishing. After 15 minutes, when he was returning home for his dinner, he saw the accused running towards western side wearing a wet lungi. When he enquired the accused, he replied that he slipped into the river while washing his legs. The evidence of P.Ws.6,7 and 8 would show that they saw the body of the deceased floating on the river on the next day i.e., on 25.3.2001 at 6.00 a.m. The further evidence of P.W.8 is that, based on the statement of the accused in the presence of P.W.8, the police recovered M.Os.8,9 and 10, viz., lungi, shirt and jatti, which was marked under mahazar Ex.P.7, which corroborates with the evidence of P.W.14, that he saw the accused running towards western side wearing wet lungi. Of course, in the cross examination, P.W.14 could not say the colour of the lungi, the accused

was wearing. P.W.14 explains that he could not see the colour of the lungi due to the darkness and the explanation is convincing. The further evidence of P.Ws.1 3 and 14, identifying the body of the deceased, corroborates with the evidence of P.Ws.1,5,6,7,8 and 15 as to the truth that the deceased was seen in the company of the accused, satisfying the last seen theory.

10.1. Then, what remains is as to the act of rape committed by the accused on the deceased girl of 10 years age. The evidence of P.Ws.1,4,5 and 15 categorically proved that the deceased was a 10 years old girl. What is more important is the postmortem certificate marked as Ex.P.10, which speaks about the injury and the evidence of P.W.4, doctor who conducted the postmortem. It is more apt to refer the relevant portion of the postmortem certificate marked as Ex.P.10.

"Appearances found at the postmortem of a body of a female lying on its back: Axillary and pubic hear not developed. Mammary glands not developed. There were totally twenty four teeth, twelve in the upper jaw and twelve teeth in lower jaw. Second molar teeth not developed.
External Injuries:

There was a tear of 1.5 cm in the 6'O clock position of the hymen. Abrasion, swelling and blood stained discharge was seen at the edges of the tear. Vagina freely admitted two fingers. There was no injury in the vagina."

The above report will speak about the tender age of the deceased, who was subjected to heinous crime of rape by the accused. The evidence of P.W.4, a lady doctor, who conducted the postmortem, through whom Ex.P.10 was marked, clearly shows that there was a tear of 1.5 cm in the 6'O clock position of the hymen; abrasion, swelling and blood stained discharge was seen at the edges of the tear and the vagina freely admitted two fingers. The above report of the doctor is strengthened by the chemical analysis report of the viscera Ex.P.9, in which it was opined that the deceased would appear to have died of shock due to subarachnoid haemorrhage 18-21 hours prior to post mortem. The above piece of evidence clearly shows that the deceased was brutally raped and due to shock, the deceased breathed her last.

10.2. The evidence of P.W.9, who examined the accused as to the potentiality of the accused, would clearly establish that the accused persists enough to perform normal sexual intercourse and he is able to procreate.

11. From a closer analysis of these witnesses, a chain of following circumstances lead to the only inference of the guilt of the accused.

i.The deceased, tender aged minor girl, viz., the daughter of P.W.1 and granddaughter of P.W.15, was staying in the house of her grandfather P.W.15, to pursue her education in a school near Pallivasal at Thiruvarur;
ii.the accused was working as servant in the house of P.W.15;
iii.deposing confidence in the accused, both P.W.15 and P.W.1, used to send the girl to the house of P.W.1 and P.W.15 vice versa, accompanied by the accused;
iv.on the fateful day, viz., 24.3.2001 evening, the deceased was sent in the

company of the accused, from the house of P.W.15 and P.W.1 with kerosene and sugar and he reached the house of P.W.1 at 7.30 to 8.00 a.m., when P.W.5 was present and after some time, the accused took the deceased back to the house of P.W.15. Both the deceased and the accused were going to the house of P.W.15;
v.P.W.13 enquired the deceased as to where she was going, to which she replied that she is going to her grandfather's house for studying;
vi.thereafter the body was found floating in the river, as seen by P.Ws.1,5,6,7,8 and 15;
vii.the evidence of P.W.4, the lady doctor, who conducted postmortem, through whom Ex.P.10 was marked, proves that the deceased, a tender aged girl, was subjected to rape;
viii.the evidence of the doctor P.W.9 is that the accused is potential enough to commit the crime of rape;
ix.the possibility of any person other than the accused being the author of the crime becomes impossible when the accused was returning wearing wet lungi, as spoken by P.W.13; and
x. the above chain of circumstances satisfy the last seen theory, since the accused was seen last with the deceased and thereafter the deceased was raped and found dead.

12. From the above facts, it is clear that each and every incriminating circumstance was clearly established by a reliable and clinching evidence and the chain of events discussed above irresistibly proves the guilt of the accused for safe conviction as the same is not merely based on suspicion or conjecture and every link stands satisfactorily proved and the link between each of circumstantial evidence is in proximity to the time and situation.

13. Of course, when the accused was questioned on the above aspect of the prosecution case, his defence was a total denial and plea of ignorance. The bald statement of the accused, either denying the evidence of the prosecution, or pleading ignorance of the same, only proves his adamant attitude of total denial and such false denial and plea of ignorance assume importance as it would supply a missing link in the chain, if any, even though nothing as such was pointed out by the learned counsel appearing for the appellant.

14. In Kamta Tiwari -vs- State of Madhya Pradesh { 1996 (6) S.C.C.25 0}, where the deceased was aged about 7 years and the accused not only brutally raped and but also killed her and thrown her body into a well, the Supreme Court following the decisions in Bachan Singh v. State of Punjab AIR 1980 SC 898 and Machhi Singh v. State of Punjab, AIR 1983 SC 957, has held thus,
"When an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of her trust, his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. In fine, the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a "rarest of rare" cases where the sentence of death is eminently desirable not only to deter others from

committing such atrocious crimes, but also to give emphatic expression to society's abhorrence of such crimes."

15. Hence, holding that the prosecution has proved its case beyond all reasonable doubt, we are inclined to dismiss the appeal confirming the order of conviction and sentence dated 5.3.2002 made in S.C.No.2 8 of 2002 on the file of Additional Sessions Judge, Nagapattinam, however, with the modification as indicated below.

i.The conviction and sentence imposed on the appellant for the offences punishable under Sections 376(f), 302 and 201 I.P.C., is confirmed.

ii.The conviction and sentence imposed on the appellant for the offence punishable under Section 366 I.P.C., is set aside.

iii.The sentences shall run concurrently, instead of consecutively as stated in the order of conviction passed by the trial Court.

Index : Yes
Internet : Yes

KST/sl.

To

1. The Additional Sessions Judge, Nagapattinam District.
2. The Inspector of Police,Thalai Gnayiru Police Station.
3. The Public Prosecutor, High Court, Chennai.

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